

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 898**

Introduced by Preister, 5

Read first time January 5, 2006

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to the Open Meetings Act; to amend sections  
2 84-1410, 84-1411, 84-1412, and 84-1414, Revised Statutes  
3 Cumulative Supplement, 2004; to change provisions  
4 relating to closed sessions; to provide for detailed  
5 agendas; to change provisions relating to public bodies;  
6 and to repeal the original sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 84-1410, Revised Statutes Cumulative  
2 Supplement, 2004, is amended to read:

3           84-1410 (1) Any public body may hold a closed session  
4 by the affirmative vote of a majority of its voting members if  
5 the motion to close represents that a closed session is clearly  
6 necessary either (a) for the protection of the public interest or  
7 (b) for the prevention of needless injury to the reputation of  
8 an individual and if such individual has not requested a public  
9 meeting the public body has notified the individual at least  
10 twenty-four hours prior to the meeting and given such individual  
11 the opportunity to request a public meeting. In addition, the  
12 specific subject matter and the reason necessitating the closed  
13 session shall be identified in the motion to close. Closed sessions  
14 may be held for, but shall not be limited to, such reasons as:

15           ~~(a)~~ (i) Strategy sessions with respect to collective  
16 bargaining, real estate purchases, pending litigation, or  
17 litigation which is imminent as evidenced by communication of a  
18 claim or threat of litigation to or by the public body;

19           ~~(b)~~ (ii) Discussion regarding deployment of security  
20 personnel or devices;

21           ~~(c)~~ (iii) Investigative proceedings regarding allegations  
22 of criminal misconduct; or

23           ~~(d)~~ (iv) Evaluation of the job performance of a person  
24 when necessary to prevent needless injury to the reputation of a  
25 person and if such person has not requested a public meeting.

1           Nothing in this section shall permit a closed meeting for  
2 discussion of the appointment or election of a new member to any  
3 public body.

4           (2) The vote to hold a closed session shall be taken  
5 in open session. The entire motion, the vote of each member on  
6 the question of holding a closed session, ~~the reason for the~~  
7 ~~closed session,~~ and the time when the closed session commenced  
8 and concluded shall be recorded in the minutes. If the motion  
9 to close passes, then the presiding officer immediately prior to  
10 the closed session shall restate on the record the limitation of  
11 the specific subject matter of the closed session, and upon the  
12 reconvening of the public body in open session, such officer shall  
13 confirm on the record that no other subject matter was considered,  
14 and that no formal vote, informal vote, straw vote, or poll was  
15 taken during the closed session. The public body holding such a  
16 closed session shall restrict its consideration of matters during  
17 the closed portions to only those purposes set forth in the ~~minutes~~  
18 motion to close as the reason for the closed session. The meeting  
19 shall be reconvened in open session before any formal action may  
20 be taken. For purposes of this section, formal action shall mean a  
21 collective decision or a collective commitment or promise to make  
22 a decision on any question, motion, proposal, resolution, order,  
23 or ordinance or formation of a position or policy but shall not  
24 include negotiating guidance given by members of the public body  
25 to legal counsel or other negotiators in closed sessions authorized

1 under subdivision (1)(a) of this section.

2 (3) Any member of any public body shall have the right  
3 to challenge the continuation of a closed session if the member  
4 determines that the session has exceeded the reason stated in the  
5 original motion to hold a closed session or if the member contends  
6 that the closed session is neither clearly necessary for (a) the  
7 protection of the public interest or (b) the prevention of needless  
8 injury to the reputation of an individual. Such challenge shall  
9 be overruled only by a majority vote of the members of the public  
10 body. Such challenge and its disposition shall be recorded in the  
11 minutes.

12 (4) Nothing in this section shall be construed to require  
13 that any meeting be closed to the public. No person or public body  
14 shall fail to invite a portion of its members to a meeting, and  
15 no public body shall designate itself a subcommittee of the whole  
16 body for the purpose of circumventing the Open Meetings Act. No  
17 closed session, informal meeting, chance meeting, social gathering,  
18 email, fax, or other electronic communication shall be used for the  
19 purpose of circumventing the requirements of the act.

20 (5) The act does not apply to chance meetings or to  
21 attendance at or travel to conventions or workshops of members  
22 of a public body at which there is no meeting of the body then  
23 intentionally convened, if there is no vote or other action taken  
24 regarding any matter over which the public body has supervision,  
25 control, jurisdiction, or advisory power.

1                   Sec. 2. Section 84-1411, Revised Statutes Cumulative  
2 Supplement, 2004, is amended to read:

3                   84-1411 (1) Each public body shall give reasonable  
4 advance publicized notice of the time and place of each meeting  
5 by a method designated by each public body and recorded in its  
6 minutes. Such notice shall be transmitted to all members of the  
7 public body and to the public. Such notice shall contain an agenda  
8 of subjects known at the time of the publicized notice or a  
9 statement that the agenda, which shall be kept continually current,  
10 shall be readily available for public inspection at the principal  
11 office of the public body during normal business hours. Agenda  
12 items shall be sufficiently detailed to give all interested persons  
13 reasonable advance information about specific proposals, projects,  
14 and other issues which are known to be subject to consideration at  
15 the meeting. Except for items of an emergency nature, the agenda  
16 shall not be altered later than (a) twenty-four hours before the  
17 scheduled commencement of the meeting or (b) forty-eight hours  
18 before the scheduled commencement of a meeting of a city council  
19 or village board scheduled outside the corporate limits of the  
20 municipality. The public body shall have the right to modify the  
21 agenda to include items of an emergency nature only at such public  
22 meeting.

23                   (2) A meeting of a state agency, state board, state  
24 commission, state council, or state committee, of an advisory  
25 committee of any such state entity, of an organization created

1 under the Interlocal Cooperation Act, the Joint Public Agency Act,  
2 or the Municipal Cooperative Financing Act, of the governing body  
3 of a public power district having a chartered territory of more  
4 than fifty counties in this state, or of the governing body of  
5 a risk management pool or its advisory committees organized in  
6 accordance with the Intergovernmental Risk Management Act may be  
7 held by means of videoconferencing or, in the case of the Judicial  
8 Resources Commission in those cases specified in section 24-1204,  
9 by telephone conference, if:

10 (a) Reasonable advance publicized notice is given;

11 (b) Reasonable arrangements are made to accommodate the  
12 public's right to attend, hear, and speak at the meeting, including  
13 seating, recordation by audio or visual recording devices, and  
14 a reasonable opportunity for input such as public comment or  
15 questions to at least the same extent as would be provided if  
16 videoconferencing or telephone conferencing was not used;

17 (c) At least one copy of all documents being considered  
18 is available to the public at each site of the videoconference or  
19 telephone conference;

20 (d) At least one member of the state entity, advisory  
21 committee, or governing body is present at each site of the  
22 videoconference or telephone conference; and

23 (e) No more than one-half of the state entity's, advisory  
24 committee's, or governing body's meetings in a calendar year are  
25 held by videoconference or telephone conference.

1           Videoconferencing,       telephone       conferencing,       or  
2       conferencing by other electronic communication shall not be used  
3       to circumvent any of the public government purposes established  
4       in the Open Meetings Act.

5           (3) A meeting of the governing body of an entity formed  
6       under the Interlocal Cooperation Act or the Joint Public Agency Act  
7       or of the governing body of a risk management pool or its advisory  
8       committees organized in accordance with the Intergovernmental Risk  
9       Management Act may be held by telephone conference call if:

10          (a) The territory represented by the member public  
11       agencies of the entity or pool covers more than one county;

12          (b) Reasonable advance publicized notice is given which  
13       identifies each telephone conference location at which a member of  
14       the entity's or pool's governing body will be present;

15          (c) All telephone conference meeting sites identified in  
16       the notice are located within public buildings used by members  
17       of the entity or pool or at a place which will accommodate the  
18       anticipated audience;

19          (d) Reasonable arrangements are made to accommodate the  
20       public's right to attend, hear, and speak at the meeting, including  
21       seating, recordation by audio recording devices, and a reasonable  
22       opportunity for input such as public comment or questions to  
23       at least the same extent as would be provided if a telephone  
24       conference call was not used;

25          (e) At least one copy of all documents being considered

1 is available to the public at each site of the telephone conference  
2 call;

3 (f) At least one member of the governing body of the  
4 entity or pool is present at each site of the telephone conference  
5 call identified in the public notice;

6 (g) The telephone conference call lasts no more than one  
7 hour; and

8 (h) No more than one-half of the entity's or pool's  
9 meetings in a calendar year are held by telephone conference call.

10 Nothing in this subsection shall prevent the  
11 participation of consultants, members of the press, and  
12 other nonmembers of the governing body at sites not identified in  
13 the public notice. Telephone conference calls, emails, faxes, or  
14 other electronic communication shall not be used to circumvent any  
15 of the public government purposes established in the Open Meetings  
16 Act.

17 (4) The secretary or other designee of each public body  
18 shall maintain a list of the news media requesting notification  
19 of meetings and shall make reasonable efforts to provide advance  
20 notification to them of the time and place of each meeting and the  
21 subjects to be discussed at that meeting.

22 (5) When it is necessary to hold an emergency meeting  
23 without reasonable advance public notice, the nature of the  
24 emergency shall be stated in the minutes and any formal action  
25 taken in such meeting shall pertain only to the emergency.

1 Such emergency meetings may be held by means of electronic or  
2 telecommunication equipment. The provisions of subsection (4)  
3 of this section shall be complied with in conducting emergency  
4 meetings. Complete minutes of such emergency meetings specifying  
5 the nature of the emergency and any formal action taken at the  
6 meeting shall be made available to the public by no later than the  
7 end of the next regular business day.

8 (6) A public body may allow a member of the public or  
9 any other witness other than a member of the public body to appear  
10 before the public body by means of video or telecommunications  
11 equipment.

12 Sec. 3. Section 84-1412, Revised Statutes Cumulative  
13 Supplement, 2004, is amended to read:

14 84-1412 (1) Subject to the Open Meetings Act, the public  
15 has the right to attend and the right to speak at meetings of  
16 public bodies, and all or any part of a meeting of a public body,  
17 except for closed sessions called pursuant to section 84-1410, may  
18 be videotaped, televised, photographed, broadcast, or recorded by  
19 any person in attendance by means of a tape recorder, camera, video  
20 equipment, or any other means of pictorial or sonic reproduction or  
21 in writing.

22 (2) It shall not be a violation of subsection (1) of  
23 this section for any public body to make and enforce reasonable  
24 rules and regulations regarding the conduct of persons attending,  
25 speaking at, videotaping, televising, photographing, broadcasting,

1 or recording its meetings. A body may not be required to allow  
2 citizens to speak at each meeting, but it may not forbid public  
3 participation at all meetings.

4 (3) No public body shall require members of the public to  
5 identify themselves as a condition for admission to the meeting.  
6 The body may require any member of the public desiring to address  
7 the body to identify himself or herself.

8 (4) No public body shall, for the purpose of  
9 circumventing the Open Meetings Act, hold a meeting in a place  
10 known by the body to be too small to accommodate the anticipated  
11 audience.

12 (5) No public body shall be deemed in violation of this  
13 section if it holds its meeting in its traditional meeting place  
14 which is located in this state.

15 (6) No public body shall be deemed in violation of this  
16 section if it holds a meeting outside of this state if, but only  
17 if:

18 (a) A member entity of the public body is located outside  
19 of this state and the meeting is in that member's jurisdiction;

20 (b) All out-of-state locations identified in the notice  
21 are located within public buildings used by members of the entity  
22 or at a place which will accommodate the anticipated audience;

23 (c) Reasonable arrangements are made to accommodate the  
24 public's right to attend, hear, and speak at the meeting, including  
25 making a telephone conference call available at an instate location

1 to members, the public, or the press, if requested twenty-four  
2 hours in advance;

3 (d) No more than twenty-five percent of the public body's  
4 meetings in a calendar year are held out-of-state;

5 (e) Out-of-state meetings are not used to circumvent any  
6 of the public government purposes established in the Open Meetings  
7 Act;

8 (f) Reasonable arrangements are made to provide viewing  
9 at other instate locations for a videoconference meeting if  
10 requested fourteen days in advance and if economically and  
11 reasonably available in the area; and

12 (g) The public body publishes notice of the out-of-state  
13 meeting at least twenty-one days before the date of the meeting in  
14 a legal newspaper of statewide circulation.

15 (7) The public body shall, upon request, make a  
16 reasonable effort to accommodate the public's right to hear the  
17 discussion and testimony presented at the meeting.

18 (8) Public bodies shall make available at the meeting  
19 or the instate location for a telephone conference call or  
20 videoconference, for examination and copying by members of the  
21 public, at least one copy of all reproducible written material to  
22 be discussed at an open meeting. Public bodies shall make available  
23 at least one current copy of the Open Meetings Act posted in the  
24 meeting room at a location accessible to members of the public. At  
25 the beginning of the meeting, the public shall be informed about

1 the location of the posted information.

2           Sec. 4. Section 84-1414, Revised Statutes Cumulative  
3 Supplement, 2004, is amended to read:

4           84-1414 (1) Any motion, resolution, rule, regulation,  
5 ordinance, or formal action of a public body made or taken in  
6 violation of the Open Meetings Act shall be declared void by the  
7 district court if the suit is commenced within one hundred twenty  
8 days of the meeting of the public body at which the alleged  
9 violation occurred. Any motion, resolution, rule, regulation,  
10 ordinance, or formal action of a public body made or taken in  
11 substantial violation of the Open Meetings Act shall be voidable by  
12 the district court if the suit is commenced more than one hundred  
13 twenty days after but within one year of the meeting of the public  
14 body in which the alleged violation occurred. A suit to void any  
15 final action shall be commenced within one year of the action.

16           (2) The Attorney General and the county attorney of the  
17 county in which the public body ordinarily meets shall enforce the  
18 Open Meetings Act.

19           (3) Any citizen of this state may commence a suit  
20 in the district court of the county in which the public body  
21 ordinarily meets or in which the plaintiff resides for the purpose  
22 of requiring compliance with or preventing violations of the Open  
23 Meetings Act, for the purpose of declaring an action of a public  
24 body void, or for the purpose of determining the applicability of  
25 the act to discussions or decisions of the public body. It shall

1 not be a defense that the citizen attended the meeting and failed  
2 to object at such time. The court may order payment of reasonable  
3 attorney's fees and court costs to a successful plaintiff in a suit  
4 brought under this section.

5 (4) Any member of a public body who knowingly violates or  
6 conspires to violate or who attends or remains at a meeting knowing  
7 that the public body is in violation of any provision of the Open  
8 Meetings Act shall be guilty of a Class IV misdemeanor for a first  
9 offense and a Class III misdemeanor for a second or subsequent  
10 offense.

11 Sec. 5. Original sections 84-1410, 84-1411, 84-1412,  
12 and 84-1414, Revised Statutes Cumulative Supplement, 2004, are  
13 repealed.